

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: July 22, 2021

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Engineering (Maloy, Ramos) *TB*
Office of the General Counsel (Osborn, Crawford) *JSC*

RE: Docket No. 20210038-WS – Joint notice of abandonment of water and wastewater systems in Charlotte and DeSoto Counties by Sun River Utilities, Inc. and North Charlotte Waterworks, Inc., effective February 21, 2021.

AGENDA: 08/03/21 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Passidomo

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

Sun River Utilities, Inc. (Sun River or Utility) is a Class C water and wastewater utility located in Charlotte and Desoto Counties in the Southern Water Use Caution Area of the Southwest Florida Water Management District. The Utility serves approximately 60 residential water and wastewater customers. The Utility's 2020 Annual Report indicates that the Utility had total operating revenues of \$53,700 and a net operating loss of \$12,966.

The Utility has been operating in Charlotte County since 1982 and was granted its water and wastewater certificates (611-W and 527-S) by the Commission in 1999, as Hunter Creek

Utilities, LLC (Hunter Creek).¹ The Utility was subsequently transferred from Hunter Creek to MSM Utilities, LLC in 2004 and then transferred to Sun River in 2007.²

On September 25, 2007, Charlotte County adopted a resolution rescinding the Commission's jurisdiction, which the Commission acknowledged in Order No. PSC-07-0984-FOF-WS. However, in 2008, Sun River filed an application for original certificates to provide service in Charlotte and DeSoto Counties, pursuant to 367.171(7), Florida Statutes (F.S.), since the Utility's services now transverse county boundaries.³ Subsequently, the Commission granted Certificate Nos. 646-W and 554-S to Sun River in 2009.⁴ On December 10, 2015, Sun River filed a 60 day notice of its intent to abandon the Utility due to financial hardships associated with Utility operations. On February 5, 2016, Sun River rescinded its notice of abandonment, because the Utility was sold to North Charlotte Waterworks, Inc. (North Charlotte) on February 5, 2016. Subsequently, North Charlotte filed an application for transfer of the Utility's systems and certificates.⁵ However, unlike previous owners, North Charlotte could not obtain adequate ownership or right to continued use of the land upon which the treatment facilities are located, as required by Section 367.1213, F.S. Therefore, on December 23, 2020, North Charlotte and Sun River filed a joint notice of intent to abandon the water and wastewater systems effective April 30, 2021.⁶

Charlotte County filed a Petition for Appointment of Receiver with the Circuit Court of the Twentieth Judicial Circuit in and for Charlotte County (Circuit Court). The Circuit Court issued an Order in Case No. 21-0148CA, on April 30, 2021, in which it declared the Utility abandoned and appointed Michael Smallridge as receiver of the water and wastewater system.

The purpose of this recommendation is to acknowledge the joint notice of abandonment by Sun River Utilities, Inc. and North Charlotte Waterworks, Inc. and acknowledge the appointment of the Utility's receiver. The Commission has jurisdiction pursuant to Section 367.165, F.S.

¹Order No. PSC-99-0756-FOF-WS, issued April 19, 1999, in Docket No. 19980731-WS, *In re: Application for certificate to provide water and wastewater service in Charlotte County by Hunter Creek Utilities, LLC.*

²Order Nos. PSC-05-0147-PAA-WS, issued February 7, 2005, in Docket No. 20031042-WS, *In re: Application for transfer of Certificate Nos. 611-W and 527-S in Charlotte County from Hunter Creek Utilities, LLC to MSM Utilities, LLC, in Charlotte County* and PSC-07-0163-FOF-WS, issued February 23, 2007, in Docket No. 20060820-WS, *In re: Application for transfer of majority organizational control and Certificate Nos. 611-W and 527-S of MSM Utilities, LLC in Charlotte County to Sun River Utilities, Inc.*

³Docket No. 20080272-WS

⁴Order No. PSC-09-0609-FOF-WS, issued September 8, 2009, in Docket No. 20080272-WS, *In re: Application for certificates to provide water and wastewater service in Charlotte and DeSoto Counties by Sun River Utilities, Inc.*

⁵Document No. 01342-2016, filed on March 14, 2016.

⁶Document No. 13752-2020, filed on December 24, 2020.

Discussion of Issues

Issue 1: Should the Commission acknowledge the joint notice of abandonment by North Charlotte Waterworks, Inc., and Sun River Utilities, Inc., and the appointment of Michael Smallridge as receiver?

Recommendation: Yes. The Commission should acknowledge the joint notice of abandonment by North Charlotte and Sun River, pursuant to Section 367.165, F.S., and appointment of Michael Smallridge as receiver. (Maloy)

Staff Analysis: Section 367.165(1), F.S., requires that a utility's owner or operator provide 60 days' notice to the county or counties in which the utility is located and to the Commission prior to abandonment of the utility. Failure to provide such notice constitutes a misdemeanor of the first degree, according to the Statute. By letter dated December 23, 2020, and filed with the Commission on December 24, 2020, North Charlotte provided Charlotte County and this Commission 60 days' notice of the intent to abandon the Utility's water and wastewater facilities as of April 30, 2021.

Charlotte County filed a Petition for Appointment of Receiver with the Circuit Court in February 2021, in conformance with Section 367.165(2), F.S. The statute allows such receiver to be the governing body of a political subdivision, such as a county or any other person deemed appropriate. The receiver is responsible for operating the utility from the date of abandonment until the receiver disposes of the property of the utility in a manner designed to continue the efficient and effective operation of utility service. By Order dated April 30, 2021, the Circuit Court acknowledged the County's petition and appointed Michael Smallridge as receiver of the Utility effective April 30, 2021. Michael Smallridge accepted that responsibility and began operating the water and wastewater systems on that date.

The Circuit Court's Order gave Michael Smallridge responsibility and authority to operate, maintain, and improve the system; apply for permits and interact with state agencies involving system operation; collect charges for service; pay expenses; discontinue operation or dispose of land, facilities, and assets to satisfy all outstanding obligations of the Utility, subject to court approval; and, do all things reasonably required to operate and maintain the system as a viable system. In addition, the Order requires an annual report to be filed, with the Circuit Court, regarding the financial and operating status of the system.

In accordance with Rule 25-30.090(3), Florida Administrative Code (F.A.C.), within 10 days of the appointment of a receiver by the Circuit Court, the receiver shall request from the Commission a copy of the utility's tariff and most recent annual report. A copy of the Utility's tariff and 2019 Annual Report have been sent to Michael Smallridge. Further, the Utility has filed its 2020 Annual Report and is up to date on its regulatory assessment fees.

In consideration of the foregoing, staff recommends that the Commission acknowledge North Charlotte's and Sun River's joint notice of abandonment, pursuant to Section 367.165, F.S., and acknowledge the appointment of Michael Smallridge as the Utility's receiver as of April 30, 2021. Any further disposition regarding the Utility will be addressed in a separate docket.

Issue 2: Should this docket be closed?

Recommendation: Yes. If the Commission approves staff's recommendation in Issue 1, this docket should be closed, as no further action is necessary. (Osborn, Crawford)

Staff Analysis: If the Commission approves staff's recommendation in Issue 1, there are no outstanding issues to be addressed, and the docket can be closed.